

You claim that the names of witnesses and detailed statements made during the EEOC officer's investigation are excepted from public disclosure by a common-law right of privacy and are confidential as a matter of law, citing *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

Although the allegations are described as relating to sexual harassment, the documents you have submitted relate to claims of sex discrimination, *i.e.*, preferential treatment of men over women in the work environment. See also 42 U.S.C. § 2000e-2(a)(1) (employment discrimination on the basis of sex); 29 C.F.R. § 1604.11(a) (providing that harassment on the basis of sex violates prohibition against discrimination in employment on the basis of sex). Compare Penal Code § 39.02(c) (sexual harassment)² with Labor Code § 21.051 (discrimination against an individual with respect to terms and conditions of work based on sex). None of the documents submitted to us relate to unwelcome sexual advances or other conduct of a sexual nature.

The information considered by the *Ellen* court involved "names of witnesses required to give information under threat of discipline, their statements regarding highly embarrassing, offensive and unprofessional conduct in the workplace, their dating and sexual relationships, the state of marriages" and "sexual assault and mental abuse in the workplace." 840 S.W.2d at 524-25. The type of information considered by the *Ellen* court is clearly distinguishable from the information submitted by Del Mar College. Furthermore, the documents contain nothing highly intimate or embarrassing. Del Mar College may not withhold the requested documents under the doctrine of common-law privacy as incorporated into section 552.101 of the Government Code.³

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

²Section 39.02(c) is effective until September 1, 1994. Section 39.03(c) of the Penal Code is effective September 1, 1994. See Acts 1993, 73d Leg., ch. 900, § 1.01.

³You assert that "[t]he witnesses supplied their statements only upon the assurance of confidentiality by the EEOC officer." A governmental body may not enter into an agreement to keep information confidential except where statutorily authorized. Open Records Decision No. 444 (1986). Nor is information confidential under the Open Records Act simply because the party submitting it anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

KKO/LBC/rho

Ref.: ID# 26081

Enclosures: Submitted documents

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(w/o enclosures)